

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-202-C - ORDER NO. 2003-654
OCTOBER 31, 2003

IN RE: Delta Phones, Inc.,)	ORDER GRANTING
)	MOTION FOR BONDS
Complainant,)	AND/OR LETTERS OF
)	CREDIT
vs.)	
)	
BellSouth Telecommunications, Inc.,)	
)	
Respondent.)	
)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Motion for Bonds and/or Letter of Credit (Motion) filed by BellSouth Telecommunications, Inc. (BellSouth) against Delta Phones, Inc. (Delta Phones). In Order No. 2003-560, the Commission held that oral arguments were to be scheduled regarding BellSouth's Motion. Oral arguments were heard regarding BellSouth's Motion on October 8, 2003. The Honorable Mignon Clyburn, Chairman, presided at the October 8, 2003, hearing. BellSouth was represented by Patrick Turner, Esquire. John J. Pringle, Jr. represented Delta Phones, Inc. The Commission Staff was represented by Jocelyn Boyd.

BellSouth argues that every day that goes by BellSouth loses money because Delta Phones receives service and does not pay for the service it receives from BellSouth. BellSouth has not received a payment from Delta Phones since March 2003.

Additionally, Delta Phones has not paid the regulatory assessment fees that it owes in South Carolina.

Moreover, BellSouth's Motion outlines Delta Phones' failure to comply with regulatory requirements in several other states. The Louisiana Public Service Commission has issued a Show Cause Order against Delta Phones. In its Order, the Louisiana Public Service Commission enumerates the following reasons for the Show Cause Order against Delta Phones: (1) failure to possess adequate financial, managerial, and/or technical abilities to provide service; (2) failing to file, by certified mail, with the Commission District Offices and Utilities Division a notarized affidavit verifying that it will either pay the undisputed amount owed to BellSouth or that it will mail or send telephonic notice to its customers at least ten days prior to the disconnection date listed on the notice and for failing to file a list of customer names and addresses under seal which shall be used by the Commission; (3) failure to send a notice to end user customers notifying them that their telephone service may be subject to disconnect due to billing issues arising with BellSouth unrelated to the customer's payment status and that they may need to prepare other arrangements on or before the disconnect to avoid loss of service; (4) failure to maintain a performance bond, irrevocable letter of credit or other valid form of security to cover prepayments and deposits of end users, and (5) failure to file the necessary annual and semi-annual reports with the Commission.

A Georgia Public Service Commission Hearing Officer recommended on August 13, 2003, that Delta Phones' application for a Certificate of Authority to Provide Competitive Local Exchange Services be denied. In its recommendation, the hearing

officer stated that Delta Phones failed to appear at the hearing and its application failed to provide adequate information to form a determination of its technical and financial capabilities as contemplated by O.C.G.A. §46-5-163.

On July 14, 2003, the Alabama Public Service Commission revoked and cancelled Delta Phones' Certificate. Regarding its complaint against BellSouth before the Mississippi Public Service Commission, Delta Phones moved for a voluntary dismissal of its Complaint in September 2003. The Kentucky Public Service Commission instituted an investigation into a billing dispute between Delta Phones and BellSouth. On August 11, 2003, the Kentucky Public Service Commission found that there was no evidence that BellSouth knowingly and consistently issued inflated and inaccurate bills to Delta Phones. The Kentucky Public Service Commission dismissed the complaints against BellSouth.

The Tennessee Regulatory Authority (TRA) issued on August 15, 2003 an Order Requiring Compliance by Delta Phones with Tennessee Statutes and Rules and Regulations of the TRA and Appointing a Hearing Officer. The TRA ordered, *inter alia*, Delta Phones (1) to provide a valid surety bond or letter of credit no later than July 31, 2003; (2) to remit to the TRA all 2003 Inspection, Control and Supervision Fees no later than July 31, 2003; and (3) to provide to the TRA information no later than July 31, 2003, regarding the alleged transfer of ownership for a determination as to whether the transaction requires TRA approval. Delta Phones surrendered its resale certificate in Tennessee on August 15, 2003.

BellSouth asserts in its Motion that BellSouth's concerns regarding both Delta Phones' motives for filing its Complaint with the Commission and Delta Phones' ability to pay for the services BellSouth has provided (and continues to provide) to Delta Phones are well-founded. BellSouth requests that the Commission issue an order that protects BellSouth against an ever-increasing unpaid balance that, in the absence of such protection, likely would prove to be uncollectible. Specifically, BellSouth requests an order providing that within fourteen days, Delta Phones must post an appropriate bond or an appropriate letter of credit in the amount of \$193,292.58 (which is the amount of unpaid bills Delta Phones owes BellSouth for services provided in South Carolina as of June 25, 2003). BellSouth requests that the order provide that if Delta Phones does not satisfy these requirements within fourteen days, Delta Phones' Complaint is automatically dismissed with prejudice and BellSouth is permitted to disconnect immediately all service to Delta Phones in South Carolina.

Additionally, in order to provide BellSouth protection with regard to bills it renders in the future for services it provides to Delta Phones in South Carolina, BellSouth requests that the order require that for all bills issued after June 25, 2003, and continuing until the resolution of Delta Phones' Complaint, Delta Phones must, by the due date of each bill: (1) pay BellSouth the undisputed amount of the bills and (2) post either separate bonds or separate letters of credit in the amount of any disputed amounts of any such bill. BellSouth requests that the order provide that if Delta Phones does not meet these requirements, Delta Phones' Complaint be automatically dismissed with prejudice

and that BellSouth be permitted to disconnect immediately all service to Delta Phones in South Carolina.

During the oral arguments, counsel for Delta Phones argued that when Delta Phones filed its Complaint, Delta Phones considered its pleading to be a good faith dispute. Delta Phones would prefer that the issues and facts in its Complaint be “hashed out.”

The Commission Staff argued that the Commission could either institute an investigation regarding the billing disputes in this case or require Delta Phones to post a bond and/or letter of credit. S.C. Code Section 58-9-780 gives the Commission the authority to investigate the billing disputes between Delta Phones and BellSouth. The Commission could proceed with an investigation either with or without a hearing, as it deems best. The Commission Staff also noted that while there is not a statute specifically authorizing the Commission to require the posting of a bond and/or letter of credit, there is not a statute prohibiting the Commission from taking such action. The Commission, pursuant to S.C. Code Section 58-9-720 has the power to fix just and reasonable practices to be imposed, observed, and followed by any and all telephone utilities. The Commission Staff argued that the Commission can find, if it deems necessary, that bonds and/or letters of credit should be posted when a complainant’s financial status is questionable and when it is in the public interest to require a bond and/or letter of credit, on a case by case basis.

We find that BellSouth’s Motion for Bonds and/or Letters of Credit should be granted. Delta Phones’ activity in other jurisdictions, in addition to Delta Phones’ refusal

to pay its regulatory assessment fees in South Carolina, warrants the granting of BellSouth's Motion. Further, the amount of the unpaid balance and Delta Phones' activity in other jurisdictions gives this Commission concerns over Delta Phones' ability to meet its financial obligations. The Commission therefore orders that any bond and/or letters of credit which Delta Phones may post be in such a form that if Delta Phones files for bankruptcy the proceeds of such bond or letter of credit would not become a part of the bankruptcy estate.

IT IS THEREFORE ORDERED THAT:

1. BellSouth's Motion for Bonds and/or Letter of Credit is granted.
2. Delta Phones shall post an appropriate bond or an appropriate letter of credit in the amount of \$193,292.58 within fourteen days of receiving this Order. Any bond and/or letters of credit which Delta Phones may post be in such a form that if Delta Phones files for bankruptcy the proceeds of such bond or letter of credit would not become a part of the bankruptcy estate. If Delta Phones does not post the bond or letter of credit within fourteen days, Delta Phones' Complaint shall be automatically dismissed with prejudice and BellSouth shall be permitted to disconnect immediately all service to Delta Phones in South Carolina.
3. Delta Phones shall, for all bills issued after June 25, 2003, and continuing until the resolution of Delta Phones' Complaint, by the due date of each bill: (1) pay BellSouth the undisputed amount of the bills and (2) post either separate bonds or separate letters of credit in the amount of any disputed amounts of any such bills. If Delta Phones does not meet these requirements, Delta Phones' Complaint shall be

automatically dismissed with prejudice and BellSouth shall be permitted to disconnect immediately all service to Delta Phones in South Carolina.

4. Delta Phones shall immediately notify the Commission of the posting of bonds or letters of credit to satisfy the requirements of this Order.

5. If BellSouth proceeds to disconnect service to Delta Phones in South Carolina, BellSouth shall provide notice of such disconnect to the Commission and Delta Phones twenty-four (24) hours prior to such disconnect.

6. This Order shall remain in full force and effect until further Order of the Commission.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn
Chairman

ATTEST:



Bruce F. Duke
Deputy Executive Director

(SEAL)